

April 14, 2003

VERIZON-MAINE
Proposed Tariff to Introduce the Rules,
Regulations, and Related Terms and
Conditions Pertaining to the Ordering
And Provisioning of Dark Fiber as an
Unbundled Network Element

PROCEDURAL ORDER

I. BACKGROUND

On April 2, 2003, Cornerstone Communications (Cornerstone) filed a Motion to Compel relating to Verizon's March 27th Response to Staff Data Request No. 3. Cornerstone objected to Verizon's refusal to provide the attachments to its Response to CLEC parties and argued that Verizon had not fully answered Staff's request. Cornerstone pointed out that Verizon did not comply with the terms of the August 8, 2002 Protective Order issued by the Hearing Examiner. Specifically, Verizon had failed to move for modification of the Order and instead had unilaterally decided to limit the dissemination of information. On April 10, 2003, the CLEC Coalition filed comments in support of Cornerstone's Motion.

On April 10, 2003, Verizon filed comments in opposition to the Motion. Verizon first characterized the CLECs' request for access to the information as a "fishing expedition" for information concerning Verizon's network. Verizon then argued that it had fully responded to Staff's data request and that further response was not necessary. Verizon argued that Staff's data request only required disclosure of interoffice fiber and not fiber that might be used for loops.

On April 11, 2003, oral argument was heard on the Motion during a teleconference attended by representatives of Verizon, Cornerstone, the CLEC Coalition, and GWI.

II. DECISION

First, we agree with Cornerstone that Verizon violated the terms of the Protective Order by not first seeking modification of its terms. In the future, if Verizon believes that materials being provided in discovery warrant special treatment, it should move for modification of the Protective Order as soon as possible after the discovery request has been made.

Second, we disagree with Verizon's characterization of the CLECs' motives as a "fishing expedition." It is clear from the discussion during the teleconference that the CLECs were not looking to develop a diagram of Verizon's network or attempt to ferret

out information concerning Verizon's customers. Further, it is Staff that made the request, which was aimed at reconciling Verizon statements made in other proceedings concerning the availability of dark fiber and the CLECs' experiences of the lack of availability of dark fiber. Finally, we believe that Verizon's characterization of certain information as competitively sensitive goes too far; neither the general existence of fiber between Verizon central offices nor the existence or location of major business in Maine are competitive secrets.

Third, on the question of whether CLECs should have access to all of the discovery responses provided by Verizon to the Staff, a compromise has been reached. During the teleconference, Cornerstone and the CLEC Coalition both agreed that they would be satisfied with access only to that part of Verizon's response which related to rejected dark fiber requests submitted by them individually. Verizon agreed to provide these materials. GWI requested full disclosure of all responses during the call but has subsequently agreed to the same limitation as the other CLECs. (GWI provided the Hearing Examiner with a copy of an earlier e-mail detailing GWI's rejected orders. Several of the rejected routes are covered by Verizon's response to other carriers' rejected routes. A copy of GWI's e-mail has been forward to Verizon.) Accordingly, Verizon shall provide each CLEC with all information relating to spans within specific A to Z routes previously requested by the CLEC and rejected by Verizon. Verizon should make these materials available no later than **April 18, 2003**.

With regard to the question of the sufficiency of Verizon's response to Staff's Data Request, that matter is under advisement. Staff expects to issue a procedural order in the next two weeks which will address the next steps to be taken in this proceeding.

BY ORDER OF THE HEARING EXAMINER

Trina M. Bragdon